

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY L. BROWN,

Plaintiff, No. CIV S-03-1224 GEB KJM P

vs.

D.L. RUNNELS, et al.,  
Defendants.

ORDER AND  
FINDINGS & RECOMMENDATIONS

Plaintiff is a state prison inmate proceeding pro se with a civil rights action under 42 U.S.C. § 1983. Defendants have filed a motion to dismiss the second amended complaint for failure to exhaust administrative remedies and for failure to state a claim; plaintiff has filed a motion for a temporary restraining order and for preliminary injunctive relief.

I. The Allegations Of The Amended Complaint

Plaintiff alleges that defendant Stone denied plaintiff the right to receive the magazines Black Beauties and Black Tails. Defendants Kosub, Hubbard, Colon, Runnels, Bard, Rianda and Alameida learned of Stone's actions through the grievance process, but failed to intervene to cure the constitutional violation. 12/01/03 Amended Complaint (Am. Compl.) ¶ 15.

Defendant Thompson delayed giving plaintiff the book Philosophy and Revolution and failed to give him the book Wretched Of The Earth; he also failed to notify him

1 that the books had been delayed and refused. Defendants Jackson and Wagner denied plaintiff's  
2 appeals about these subjects and defendants Runnels and Alameida did not respond to his letters  
3 outlining his claims of First Amendment violations. Am. Compl. ¶¶ 16-19.

4 The defendants have conspired to deprive plaintiff of his right to receive  
5 published material and, by mishandling the grievance procedure, to deprive him of his right of  
6 access to the courts. Am. Compl. ¶ 18.

7 II. Motion To Dismiss For Failure To Exhaust Administrative Remedies

8 The Prison Litigation Reform Act (PLRA) provides that “[n]o action shall be  
9 brought with respect to prison conditions under section 1983 of this title, . . . until such  
10 administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). “Conditions of  
11 confinement” subject to exhaustion have been defined broadly as “the effects of actions by  
12 government officials on the lives of persons confined in prisons.” 18 U.S.C. § 3626(g)(2); Smith  
13 v. Zachary, 255 F.3d 446, 449 (7th Cir. 2001); see also Lawrence v. Goord, 304 F.3d 198, 200  
14 (2d Cir. 2002). Proper exhaustion of available remedies is mandatory. Booth v. Churner, 532  
15 U.S. 731, 741 (2001); Woodford v. Ngo, \_\_\_ U.S. \_\_\_, 126 S. Ct. 2378 (2006) (addressing  
16 timeliness aspect of proper exhaustion).

17 California prison regulations provide administrative procedures in the form of one  
18 informal and three formal levels of review to address plaintiff's claims. See Cal. Code Regs.  
19 tit. 15, §§ 3084.1-3084.7. Administrative procedures generally are exhausted once a plaintiff has  
20 received a “Director's Level Decision,” or third level review, with respect to his issues or claims.  
21 Cal. Code Regs. tit. 15, § 3084.5.

22 To satisfy the exhaustion requirement, a grievance must alert prison officials to  
23 the claims the plaintiff has included in the complaint. Porter v. Nussle, 534 U.S. 516, 524-25  
24 (2002) (purpose of exhaustion requirement is to give officials “time and opportunity to address  
25 complaints internally before allowing the initiation of a federal case”); Brown v. Sikes, 212 F.3d  
26 1205, 1209 (11th Cir. 2000) (“1997e(a) requires that a prisoner provide as much relevant

1 information as he reasonably can in the administrative grievance process," but does not require  
2 that he do more than that).

3 A motion to dismiss for failure to exhaust administrative remedies prior to filing  
4 suit arises under Rule 12(b) of the Federal Rules of Civil Procedure. Wyatt v. Terhune, 315 F.3d  
5 1108, 1119 (9th Cir.), cert. denied sub nom. Alameida v. Wyatt, 540 U.S. 810 (2003). In  
6 deciding a motion to dismiss for a failure to exhaust non-judicial remedies, the court may look  
7 beyond the pleadings and decide disputed issues of fact. Id. at 1119-20. Defendants bear the  
8 burden of proving plaintiff's failure to exhaust. Id. at 1119.

9 Defendants concede that plaintiff has exhausted his administrative remedies as to  
10 defendant Stone's alleged withholding of Black Beauties and Black Tails, but argues that he has  
11 failed properly or completely to exhaust administrative remedies as to the remaining defendants.

12 A. Runnels, Alameida, Hubbard, Kosub, Rianda And Corrective Measures

13 Defendants have submitted the declaration of J. Pearson, Acting Chief Of Inmate  
14 Appeals. Pearson avers that a review of the records of the Inmate Appeals Branch showed that  
15 plaintiff secured a Director's Level Decision on his grievance concerning defendant Stone's  
16 refusal to release his publications, but that he has not received such a decision concerning his  
17 claim that defendants Alameida, Hubbard, Kosub, Bard, Rianda and Hubbard failed to correct the  
18 violation after learning of the improper denial of the magazines. Declaration of J. Pearson  
19 (Pearson Decl.) ¶¶ 5, 7-8. The grievance about the magazines, Log No. 02-00389, is attached as  
20 Exhibit A to the Declaration.

21 The grievance form, a CDC 602, informs the inmate that he "may appeal any  
22 policy, action or decision which has a significant adverse affect upon you," and instructs him to  
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1 "describe the problem." Pearson Decl., Ex. A. Plaintiff "describe[s] the problem" in part as  
2 follows:

3 The publication section of the CDC 1819<sup>1</sup> form specifically states  
4 that CCR, Title 15 section shall be cited when material  
5 (publications) meet its disapproval criteria. No such section was  
6 cited, therefore the publication meets the approval of the Director's  
7 rules, and, the withholding of the publication violates the 1st  
8 Amend. of the U.S. Const."

9 Id.

10 In Brown, cited above, plaintiff filed prison grievances over the alleged denial of  
11 medical care that became the basis of his civil rights suit. The district court dismissed the action,  
12 because plaintiff had not named the warden and the commissioner of corrections, both  
13 defendants, in the grievances. The Eleventh Circuit reversed, finding that exhaustion does not  
14 always bar suit against a person not named in the grievance. It noted:

15 [W]e conclude that while § 1997e(a) requires that a prisoner  
16 provide as much relevant information as he reasonably can in the  
17 administrative grievance process, it does not require that he do  
18 more than that.

19 Id. at 1207. It continued:

20 But naming the warden and commissioner in a grievance simply  
21 because they are the top officials in charge of the prison would not  
22 have advanced any of the policies underlying the exhaustion  
23 requirement.

24 Id. at 1209.

25 In Strong v. David, 297 F.3d 646 (7th Cir. 2002), the defendants contended  
26 dismissal of the plaintiff's civil rights action was proper because his grievances had not been  
detailed enough. The Seventh Circuit disagreed, holding that the specificity required to exhaust

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1 The filed photocopy of the grievance has cut some letters and numerals off the right  
2 side of the form, so that the reference appears to be to form 18. It appears that the form for  
3 disallowed publication is actually a CDC 1819. See Am. Compl., Ex. A (Notification Of  
4 Disapproval – Mail/Packages/Publications CDC 1819).

depends on the administrative system: “the grievances must contain the sort of information that the administrative system requires.” Id. at 649. It cautioned:

The only constraint is that no prison system may establish a requirement inconsistent with the federal policy underlying § 1983 and § 1997e(a). Thus, for example, no administrative system may demand that the prisoner specify each remedy later sought in litigation – for *Booth v. Churner*, 532 U.S. 731, 121 S.Ct. 1819, 149 L.Ed.2d 958 (2001) holds that § 1997e(a) requires each prisoner to exhaust a *process* not a *remedy*.

Id. at 649-50 (citations omitted; emphasis in original).

In *Irvin v. Zamora*, 161 F. Supp. 2d 1125 (S.D. Cal. 2001), the District Court followed the lead of the Eleventh Circuit. The court observed:

[p]laintiff’s grievances did present the relevant factual circumstances giving rise to a potential claim and did request the identities of the individuals directly responsible for spraying the pesticide. This was sufficient to put prison officials on notice of possible problems with these individuals. Plaintiff also requested that the prison conduct an investigation of the facts. As a result, the facts were investigated and developed, and the prison had an opportunity to exercise its discretion or correct any errors as appropriate under the circumstances. . . . In other words, plaintiff’s grievances were sufficient under the circumstances to put the prison on notice of the potential claims and to fulfill the basic purposes of the exhaustion requirement.

Id. at 1134-35. And as the Ninth Circuit has observed, when an inmate has followed the instruction on the grievance form to “describe the problem,” he has “availed himself of the administrative process the state gave him.” *Butler v. Adams*, 397 F.3d 1181, 1183 (9th Cir. 2005).

In this case, plaintiff put the institution and ultimately the department on notice of his claim that his publications were withheld in violation of the department’s own rules and the constitution. Requiring him to exhaust a separate claim based on the authorities’ alleged failure to take corrective action after learning of the problem would “not . . . advance[] any of the policies underlying the exhaustion requirement.” *Brown*, 212 F.3d at 1209. Plaintiff “described

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1 the problem" as directed by the grievance form, thus putting those with the power to correct it on  
2 notice.

3       B. Defendants Thompson, Jackson, Wagner, Runnels And Alameida And  
4       Philosophy & Revolution And Wretched Of The Earth

5              Defendants argue that plaintiff did not receive a Director's Level Decision on a  
6 grievance about his delay in receiving Philosophy & Revolution or about the denial of his right to  
7 receive Wretched Of The Earth. Pearson Decl. ¶¶ 10-12. Plaintiff argues that he was prevented  
8 from grieving these violations, because he was never issued a CDC 1819, which must be attached  
9 to the grievance form. Opposition (Opp'n) at 6.

10             As part of Exhibit C to the Amended Complaint, plaintiff has provided a  
11 grievance without a log number, but stamped received by HDSP Appeals on August 28, 2003.  
12 In this grievance, plaintiff complains about his delayed receipt, without notification, of  
13 Philosophy and Revolution, and the deprivation, again without notification, of Wretched Of The  
14 Earth. On the lower right corner is a handwritten notation, "8/28/03 s/o #5 Attach 1819." An  
15 appeal screening form dated August 28, 2003 is attached, with several reasons checked. The first  
16 is that the appeal is a duplicate; the second is that "the appeal is incomplete or necessary  
17 supporting documents are not attached." Under this printed explanation, a box is checked,  
18 advising plaintiff to "attach copy of CDC-1819 (Notice of Disallowed Mail Form)" and to  
19 "provide proof of claim." This form is followed by plaintiff's letter, dated September 2, 2003,  
20 referring to the screening form of August 28, in which he notes that the grievance plainly stated  
21 he had not received notice through a CDC 1819 that his publication had been withheld.

22             Plaintiff has included a similar set of documents dealing specifically with the  
23 denial of Wretched of the Earth. This grievance, dated August 21, 2003, received a response at  
24 the informal level, but was rejected at the next level because of the failure to attach a CDC 1819.  
25 Plaintiff again complained, in a letter dated September 10, 2003, that he could not comply  
26 because he had not received the form. Am. Compl., Ex. C.

1       In Miller v. Tanner, 196 F.3d 1190, 1194 (11th Cir. 1999), the Court of Appeals  
2 found that the inmate had exhausted all available remedies even though he had not pursued his  
3 grievance to the highest level of review when the denial of his intermediate grievance stated  
4 “[w]hen any grievance is terminated at the institutional level you do not have the right to appeal.  
5 The above listed grievance(s) is closed.” As the court noted, this statement told the inmate that  
6 further pursuit of his administrative remedies was not required and was “even prohibited.” Id.

7       In Miller v. Norris, 247 F.3d 736 (8th Cir. 2001), plaintiff alleged he had not  
8 pursued administrative remedies because the prison refused to provide him with grievance forms.  
9 The court noted that “a remedy that prison officials prevent a prisoner from ‘utiliz[ing]’ is not an  
10 ‘available’ remedy under § 1997e.”

11       In Brown v. Croak, 312 F.3d 109, 111-12 (3d Cir. 2002), the inmate alleged he  
12 was told by prison officials he should wait to file his grievance until an investigation into his  
13 claims of assault had been completed and only then could he pursue the administrative process if  
14 he was not satisfied with the result of the investigation. The Court of Appeals observed:

15           Assuming security officials told Brown to wait for the termination  
16 of the investigation before commencing a formal claim, and  
17 assuming the defendants never informed Brown that the  
18 investigation was completed, the formal grievance proceeding  
19 required by DC-ADM 804 was never “available” to Brown within  
20 the meaning of 42 U.S.C. § 1997e.

21       Id. at 113.

22       Plaintiff has presented evidence suggesting that administrative remedies were not  
23 available to him because he had not received the CDC 1819, which caused his grievances about  
24 the Philosophy and Revolution and Wretched Of The Earth publications to be screened out. As  
25 in the two Miller cases and Brown, prison officials told plaintiff that he could not pursue his  
26 administrative remedies without a form that other officials had not provided to him and  
continued not to provide after plaintiff's followup letters.

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1           Defendants have filed no reply to plaintiff's opposition, and thus have not  
2 explained what steps plaintiff could or should have taken that would have enabled him to follow  
3 the grievance process through to the Director's Level. Accordingly, defendants have not borne  
4 their burden of showing plaintiff failed to pursue available administrative remedies. This portion  
5 of the amended complaint has been exhausted.

6           C. Conspiracy To Deny Plaintiff Access To The Courts And Deprive Him Of  
7           Publications

8           Defendants argue that plaintiff did not receive a Director's Level determination of  
9 any grievance concerning a conspiracy among defendants to deny him access to the courts and to  
10 deprive him of his right to receive published material. Pearson Decl. ¶¶ 13-14.

11           Plaintiff argues that he filed a grievance about the conspiracy, but that it, like  
12 those about the publications, was "rejected, ignored or interfered with by the defendants/prison  
13 officials . . .," and refers the court to Exhibit D of the Amended Complaint. Opp'n at 7. That  
14 exhibit is a grievance form, dated September 18, 2003, in which plaintiff mentions the conspiracy  
15 to deprive him of his rights. This grievance form has no attachments providing any reason for its  
16 rejection and no indication, by stamp or handwritten notation, that it was submitted to or received  
17 by the appeals office at High Desert State Prison. Moreover, plaintiff does not explain how or  
18 why the form was returned to him or even how he attempted to have it delivered to the  
19 appropriate parties. Accordingly, defendants have borne their burden by pointing to plaintiff's  
20 failure to exhaust administrative remedies as to his claim of conspiracy.

21           D. Total Exhaustion

22           Defendants argue that the entire action should be dismissed if any of the claims  
23 have not been exhausted. The Ninth Circuit has rejected this "total exhaustion" approach to civil  
24 rights claims, holding that "Congress intended no special dismissal rules for § 1983 prisoner suits  
25 in addition to those spelled out in § 1997e(c)." Lira v. Herrera, 427 F.3d 1164, 1175 (9th Cir.  
26 2005), petition for cert. filed, 74 U.S.L.W. 3425 (Jan. 6, 2006) (No. 05-878). Accordingly, when

1 a civil rights action contains exhausted and unexhausted claims, “a district court should simply  
2 dismiss the unexhausted claims when the unexhausted claims are not intertwined with the  
3 properly exhausted claims.” Id. However,

4 when a plaintiff’s “mixed” complaint includes exhausted and  
5 unexhausted claims that *are* closely related and difficult to  
untangle, dismissal of the defective complaint with leave to amend  
to allege only fully exhausted claims, is the proper approach.  
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7 Id. at 1176 (emphasis in original).

8 Here, while the unexhausted claim is related to the others in the complaint, it is  
9 easy to untangle. The alleged conspiracy to deny plaintiff access to publications and to the court  
10 would require plaintiff to show a mutual understanding among conspirators to deprive plaintiff of  
11 constitutional rights, see Duvall v. Sharp, 905 F.2d 1188, 1189 (8th Cir. 1990), while the claims  
12 based on specific deprivations must be based on a showing that they are not “reasonably related  
13 to a legitimate penological objective.” Turner v. Safley, 482 U.S. 78, 89 (1987). Because each  
14 claim has different elements, the exhausted claims can proceed separately from the one that is  
15 unexhausted, without prejudice to any party. Accordingly, the court will recommend that only  
16 the portion of the complaint alleging conspiracy be dismissed.

17 III. Motion To Dismiss For Failure To State A Claim

18 In considering a motion to dismiss, the court must accept as true the allegations of  
19 the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740  
20 (1976), construe the pleading in the light most favorable to the party opposing the motion and  
21 resolve all doubts in the pleader's favor. Jenkins v. McKeithen, 395 U.S. 411, 421, reh'g denied,  
22 396 U.S. 869 (1969). Moreover, pro se pleadings are held to a less stringent standard than those  
23 drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). A motion to dismiss for failure  
24 to state a claim should not be granted unless it appears beyond doubt that plaintiff can prove no  
25 set of facts in support of the claim that would entitle him to relief. See Hishon v. King &  
26 Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); see also

1     Palmer v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981).

2       A. Wretched Of The Earth

3              Defendants argue that the informal response to plaintiff's grievance about this  
4 book shows that the book violated the CDC's policy against publications containing pictures of  
5 frontal nudity. Such a policy, they argue, has been upheld as constitutional in Frost v.  
6 Symington, 197 F.3d 348 (9th Cir. 1999) and Mauro v. Arpaio, 188 F.3d 1054 (9th Cir. 1999),  
7 and plaintiff has failed to refute the claimed reason for the rejection or otherwise challenge the  
8 policy. Motion to Dismiss (MTD) at 8.

9              Defendants have read the complaint and their own regulations too narrowly.  
10 Plaintiff alleges that the denial was without penological justification; construed liberally, this is  
11 indeed an attack on the claimed reason for the rejection and the policy underlying the action. See  
12 Turner v. Safley, 482 U.S. 78, 89 (1987) (practice that impinges on constitutional rights is valid  
13 if it is reasonably related to a legitimate penological objective). In addition, the regulation used  
14 to justify the rejection allows sexually explicit materials that meet the following criteria:

15              Educational, medical/scientific, or artistic materials, including, but  
16 not limited to, anatomy medical reference books, general  
17 practitioner reference books and/or guides, National Geographic, or  
18 artistic reference material depicting historical, modern, and/or post  
modern era art, purchased or possessed by inmates and approved  
by the institution head or their designee on a case-by-case basis.

19     15 Cal.Code Regs. § 3006(17)(B)(2). This court cannot find, at this stage, that plaintiff will be  
20 unable to show that Wretched Of The Earth, a book about political movements in colonial and  
21 post-colonial Africa, qualifies as an educational book.<sup>2</sup>

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22       <sup>2</sup> The book is described as follows on the Amazon.com website:  
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24              A distinguished psychiatrist from Martinique who took part in the Algerian Nationalist  
25 Movement, Frantz Fanon was one of the most important theorists of revolutionary  
26 struggle, colonialism, and racial difference in history. Fanon's masterwork is a classic  
alongside Edward Said's Orientalism or The Autobiography of Malcolm X, and it is now  
available in a new translation that updates its language for a new generation of readers.  
The Wretched of the Earth is a brilliant analysis of the psychology of the colonized and

1           Moreover, plaintiff has alleged that the book was withheld without notification.  
2 An inmate "has a Fourteenth Amendment due process liberty interest in receiving notice that his  
3 incoming mail is being withheld by prison authorities." Frost, 197 F.3d at 353. This portion of  
4 the complaint states a claim.

5           B. Philosophy And Revolution

6           Defendants argue that the complaint does not state a claim of a First Amendment  
7 violation because plaintiff eventually received this publication, albeit two months after it was  
8 delivered to the institution. MTD at 9.

9           While a short-term delay in mail delivery may not violate the First Amendment,  
10 this court cannot say that a two-month delay meets this definition in light of existing precedent.  
11 See Crofton v. Roe, 170 F.3d 957, 961 (9th Cir. 1999) (brief delay resulting from inspection may  
12 not violate First Amendment); cf. Sizemore v. Williford, 829 F.2d 608, 610 (7th Cir. 1987)  
13 ("relatively short-term, non content-based disruption in the delivery of inmate reading materials  
14 will not support . . . a cause of action grounded upon the First Amendment"). Moreover, as noted  
15 above, plaintiff has alleged that he was not given notice that his mail was withheld, which also  
16 may be a sufficient basis for his First Amendment claim. Frost, 197 F.3d at 353.

17           C. Right To An Appeals Process

18           Defendants argue that those allegations of the complaint outlining their refusal to  
19 act after learning of constitutional violations during the appeals process do not state a claim  
20 because there is no right to an inmate grievance process. MTD at 9. As plaintiff argues,

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21           their path to liberation. Bearing singular insight into the rage and frustration of colonized  
22 peoples, and the role of violence in effecting historical change, the book incisively attacks  
23 the twin perils of post independence colonial politics: the disenfranchisement of the  
24 masses by the elites on the one hand, and intertribal and interfaith animosities on the  
25 other. Fanon's analysis, a veritable handbook of social reorganization for leaders of  
26 emerging nations, has been reflected all too clearly in the corruption and violence that has  
plagued present-day Africa. The Wretched of the Earth has had a major impact on civil  
rights, anticolonialism, and black consciousness movements around the world . . . .  
See <[www.amazon.com](http://www.amazon.com)> (accessed on July 26, 2006).

1 however, this portion of the complaint is not based on any perceived failure of the grievance  
2 process but rather on the defendants' actions in refusing to correct First Amendment violations at  
3 the prison.

4 D. Personal Involvement And Defendants Runnels, Alameida, Bard, Kosub,  
Rianda And Hubbard

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6 These defendants argue that the complaint fails to state a claim against them  
7 because they were not personally involved in any First Amendment violations. Plaintiff alleges,  
8 however, that they had the ability to cure the violation, yet refused to act even after they received  
9 notice of it.

10 Liability may be imposed on an individual defendant under section 1983 if the  
11 plaintiff can show that the defendant proximately caused the deprivation of a federally protected  
12 right. Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988). A person deprives another of a  
13 constitutional right within the meaning of section 1983 if he commits an affirmative act,  
14 participates in another's affirmative act or omits to perform an act that he is legally required to do  
15 and thereby causes the deprivation of which the plaintiff complains. Leer, 844 F.2d at 633.  
16 Thus, a supervisor may be liable under section 1983 upon a showing of (1) personal involvement  
17 in the constitutional deprivation or (2) a sufficient causal connection between the supervisor's  
18 wrongful conduct and the constitutional violation. Redman v. County of San Diego, 942 F.2d  
19 1435, 1446 (9th Cir. 1991) (en banc). "A supervisor is only liable for constitutional violations of  
20 his subordinates if the supervisor participated in or directed the violations, or knew of the  
21 violations and failed to act to prevent them." Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

22 IV. Defendant Colon

23 Plaintiff seeks to substitute the estate or personal representative of A. Colon after  
24 learning that this defendant is deceased. However, there is no indication that plaintiff's motion  
25 has been served on defendant Colon's estate in the manner contemplated by Federal Rules of  
26 Civil Procedure 25(a) and 4. The motion therefore will be denied.

1 V. Plaintiff's Motion For Injunctive Relief

2 Plaintiff has filed a motion for a temporary restraining order and preliminary  
3 injunction, alleging that officials at California State Prison–Corcoran, where he is currently  
4 housed, have deprived him of some pages of correspondence, issues of the Jackson Advocate and  
5 San Francisco Bay View newspapers and Maoist newsletters. He seeks to restrain the warden of  
6 CSP-Corcoran and the Director of the Department of Corrections from violating his First  
7 Amendment rights.

8 The warden of CSP-Corcoran and the current Secretary of the Department of  
9 Corrections and Rehabilitation<sup>3</sup> are not defendants in this action. This court is unable to issue an  
10 order against individuals who are not parties to a suit pending before it. See Zenith Radio Corp.  
11 v. Hazeltine Research, Inc., 395 U.S. 100, 112 (1969).

12 IT IS HEREBY ORDERED that:

- 13 1. Plaintiff's motion to substitute parties (docket no. 67) is denied; and  
14 2. Plaintiff's motion for a temporary restraining order (docket no. 76) is denied.

15 IT IS HEREBY RECOMMENDED that defendants' motion to dismiss (docket  
16 no. 59) be granted on the ground that plaintiff failed to exhaust his claim that defendants  
17 conspired to deprive him of his rights to receive publications and of access to the courts, but  
18 denied in all other respects.

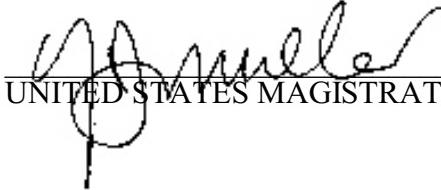
19 These findings and recommendations are submitted to the United States District  
20 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty  
21 days after being served with these findings and recommendations, any party may file written  
22 objections with the court and serve a copy on all parties. Such a document should be captioned  
23 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections  
24 shall be served and filed within ten days after service of the objections. The parties are advised  
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26 <sup>3</sup> These are the new titles of the administrator and the department, respectively.

1 that failure to file objections within the specified time may waive the right to appeal the District  
2 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: July 27, 2006.

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6 UNITED STATES MAGISTRATE JUDGE  
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